

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

F'REAL FOODS, LLC and)	
RICH PRODUCTS CORPORATION,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 16-41 (GMS)
)	CONSOLIDATED
HAMILTON BEACH BRANDS, INC.,)	
HERSHEY CREAMERY COMPANY and)	
PAUL MILLS d/b/a MILLS BROTHERS)	
MARKETS,)	
)	
Defendants.)	
)	

SCHEDULING ORDER

This ____ day of _____ 20____, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on **May 10, 2017**, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** The parties served their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) in May 2016.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before **May 31, 2017**.
3. **Reliance Upon Advice of Counsel.** Defendant shall inform plaintiffs whether it intends to rely upon advice of counsel as a defense to willful infringement no later than **14 days following the Court's claim construction ruling**. If defendants elect to rely on advice of counsel as a defense to willful infringement, defendant shall produce any such opinions on which

defendant intends to rely to plaintiff no later than **30 days following the Court's claim construction ruling.**

4. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on **October 3, 2017 at 9:30 a.m.** The *Markman* hearing is scheduled for a half day, with the time divided evenly between the two sides. The parties shall meet and confer regarding narrowing and reducing the number of claim construction issues. On or before **July 12, 2017**, the parties shall submit a Final Joint Claim Chart which shall include citations to intrinsic evidence. The plaintiff shall submit to the court, a Joint Appendix of Intrinsic Evidence (the "Joint Appendix") containing all intrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court's website at www.ded.uscourts.gov. The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on **August 9, 2017**, and answering claim construction briefs on **September 1, 2017**. Briefing will be presented pursuant to the court's Local Rules.

5. **Discovery.** All discovery in this case shall be initiated so that it will be completed on or before **February 23, 2018**. Opening expert reports on issues on which a party bears the burden of proof shall be served on or before **March 30, 2018**. Rebuttal expert reports shall be served on or before **April 27, 2018**. Expert Discovery in this case shall be initiated so that it will be completed on or before **May 31, 2018**.

a. The discovery limits set forth in the Federal Rules of Civil Procedure and Local Rules with respect to interrogatories and depositions shall govern this matter. The parties have agreed that discovery conducted previously in C.A. No. 14-1270-GMS may be used in this

consolidated action. The parties have further agreed that the Stipulated Protective Order entered in C.A. No. 14-1270-GMS should govern this consolidated action.

b. The parties shall meet and confer on narrowing the asserted claims no later than June 28, 2017.

c. Plaintiffs' final infringement contentions shall be served no later than **21 days following the Court's claim construction ruling.**

d. Defendants' final invalidity contentions shall be served no later than **35 days following the Court's claim construction ruling.**

e. **Discovery and Scheduling Matters.** Should counsel find they are unable to resolve a discovery¹ or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **Joint Letter Agenda**, which is **non-argumentative**, not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. Should the court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file within five (5) days from the date of service of the opening letter an answering letter of no more than **TWO PAGES**. The party

¹ Unless the court otherwise orders, should counsel be unable to agree on the discovery of paper and electronic documents, the court's "Default Standard for Discovery, Including Discovery of Electronically Stored Information" ("ESI") shall govern.

seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

6. **Confidential Information and Papers filed under Seal.** Should counsel find it will be necessary to apply to the court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the court within ten (10) days from the date of this order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If after making a diligent effort the parties are unable to agree on the contents of the joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 5(a).

7. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to the United States Magistrate for the purpose of exploring the possibility of a settlement. The parties shall wait to be contacted by the assigned United States Magistrate Judge.

8. **Summary Judgment Motions.** Prior to filing any summary judgment motion, the parties must submit letter briefs seeking permission to file the motion. The opening letter brief shall be no longer than five (5) pages and shall be filed with the Court no later than **June 22, 2018**. Answering letter briefs shall be no longer than five (5) pages and filed with the Court no later than **June 29, 2018**. Reply letter briefs shall be no longer than three (3) pages and filed with the Court on or before **July 9, 2018**. If the Court determines that argument is necessary to assist in the resolution of any request to file summary judgment, it shall notify the parties of the date and time on which the Court will conduct a telephone conference to hear such argument. **Unless**

the Court directs otherwise, no letter requests to file a motion for summary judgment may be filed at a time before the dates set forth in paragraph 8.

9. **Case Dispositive Motions.** To the extent permitted, all case or issue dispositive motions shall be served and filed within **21 days** of the Court's decision to permit the filing of such motions. Briefing will be presented pursuant to the Court's Local Rules. The parties may agree on an alternative briefing schedule. Any such agreement shall be in writing and filed with the Court for the Court's approval. Any request for extensions of time as set forth in this Scheduling Order **must** be accompanied by an explanation or your request will be denied.

10. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1.

11. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing Pursuant to District of Delaware Local Rule 7.1.4.

12. **Pretrial Conference.** On **February 11, 2019**, beginning at **10:00 a.m.**, the Court will hold a Pretrial Conference, in Chambers for Jury trials and via telephone for Bench trials, with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement in Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiff's counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiff's

counsel any comments on the plaintiff's draft, as well as the information defendant proposes to include in the proposed pretrial order. **Motions in limine²: NO MOTIONS IN LIMINE SHALL BE FILED**; instead, the parties shall be prepared to address their evidentiary issues at the Pretrial Conference and during trial (before and after the trial day). The parties shall file with the court the **joint** Proposed Final Pretrial Order in accordance with the terms and with the information required by the form of Final Pretrial Order, which can be located on this court's website at www.ded.uscourts.gov, on or before **January 31, 2019**.

13. **Trial**. This matter is scheduled for a **10** day **jury** trial beginning at 9:30 a.m. on **February 25, 2019**.

14. **Scheduling**. The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel is on the line for purposes of selecting a new date.

UNITED STATES DISTRICT JUDGE

² The parties should simply list, in an Exhibit to be attached to the Pretrial order, the issues under a heading such as "Plaintiff's [name of party] List Of Evidentiary Issues It Intends To Raise."

EXHIBIT A – PROPOSED DEADLINES***F'real Foods LLC et al. v. Hamilton Beach Brands, Inc. et al., C.A. No. 16-41 (GMS)***
Revised Proposed Schedule

EVENT	DEADLINE
Deadline to amend pleadings or join additional parties	May 31, 2017
Parties to meet and confer on narrowing of claims	June 28, 2017
Claim Construction	
Joint Claim Chart (including citations to intrinsic evidence)	July 12, 2017
Opening Claim Construction Briefs	August 9, 2017
Answering Claim Construction Briefs	September 1, 2017
<i>Markman</i> Hearing	October 3, 2017 at 9:30 a.m.
Defendants announce whether they intend to rely upon advice of counsel as a defense to willful infringement	14 days after <i>Markman</i> decision
Plaintiff's final patent infringement contentions (and narrowing of claims)	21 days after <i>Markman</i> decision
If Defendants rely upon advice of counsel, Defendants will produce any opinions they intend to rely upon	30 days after <i>Markman</i> decision
Defendants' final patent invalidity contentions	35 days after <i>Markman</i> decision
Close Of Fact Discovery	February 23, 2018
Expert Discovery	
Opening Expert Report For Party Bearing The Burden Of Proof On An Issue	March 30, 2018
Rebuttal Expert Report	April 27, 2018
Close Of Expert Discovery	May 31, 2018

EVENT	DEADLINE
Summary Judgment Briefing	
Deadline To File Letters Briefs Seeking Leave To File Dispositive Motions	June 22, 2018
Answering Letter Briefs In Opposition To Leave To File Dispositive Motions	June 29, 2018
Reply Letter Brief In Support Of Leave To File Dispositive Motions	July 9, 2018
Opening Dispositive Motions (if permitted)	21 days after permission granted
Answering Dispositive Briefs (if permitted)	as provided in LR 7.1.2(b)
Reply Dispositive Briefs (if permitted)	as provided in LR 7.1.2(b)
Pretrial Order	January 31, 2019
Pretrial Conference	February 11, 2019 at 10:00 a.m.
Trial	February 25, 2019 (10-day trial)